

CHARTER COMMISSION

May 21, 2003

5:00 PM

Chairman Dykstra called the meeting to order.

The Clerk called the roll.

Present: Leona Dykstra, Bob Shaw, Donna Soucy, Brad Cook, Patrick Duffy,
Keith Hirschmann, Leo Pepino, Nancy Tessier, Michael Wihby

Messr: Deputy Solicitor Arnold

Chairman Dykstra addressed item 3 on the agenda:
Approval of minutes from the May 7th meeting.

On motion of Commissioner Cook, duly seconded by Commissioner Duffy, it was voted to table the minutes from May 7th.

Chairman Dykstra addressed item 4 on the agenda:

Discussion of financial report, if available.

Deputy Clerk Johnson stated the financial report is not available.

Commissioner Pepino asked are we bankrupt.

Deputy Clerk Johnson responded no, you have funds left.

Chairman Dykstra asked for a motion to table the financial report.

Commissioner Cook stated if we don't have one, I don't think we have to table it.

Chairman Dykstra stated you don't have it, you just leave it, okay. We'll just bring it back. If we're not here, we'll have her send it to us. It depends what happens by the end of this evening. We may never meet again.

Chairman Dykstra addressed item 5 on the agenda:

Discussion of response from the Department of Revenue Administration.

Chairman Dykstra stated we just had that passed out to us, and we're going to have Carol address that.

Deputy Clerk Johnson stated the Department of Revenue Administration did send us a communication. I gave you a copy of it. They only referenced the School Committee budget hearings in that they were not clear what they were for. I believe that you have also distributed with it some language that clarifies what the 30 days after is. It's so that after they get their budget from the Aldermen, they hold a public hearing to tell people what they're going to spend it on exactly because it's essentially not the same groups. That just clarifies that it's held, so I don't know if you want to adopt those changes and the I'll insert those into the document.

Commissioner Duffy stated I move to accept the change to paragraph 6.07.

Commissioner Tessier duly seconded the motion.

Commissioner Cook stated I just think the interesting thing about this is, and I'm trying to look it up, I have no objection.

Deputy Clerk Johnson stated it's the same as last year. They just didn't catch it last time.

Commissioner Cook stated I think the language is the same as they approved the last time, so I think the comment is interesting.

Chairman Dykstra called for a vote. The motion carried.

Chairman Dykstra addressed item 6 on the agenda:

Discussion of responses from the Secretary of State, if available.

Deputy Clerk Johnson stated basically what the Secretary of State has said is that he is standing by his previous provisions. I had sent a communication based on our discussions here at the last meeting. I brought copies of that as well if anybody wants to look at it, but it was with the two tabling motions basically that are on the table, and that was placing it on the September primary and would that then allow the elimination of the Aldermen-At-Large. His answer is no. In the second instance, you wanted clarification of the language on the City Clerk which he has provided, and he has basically said there has to be an election by both the Mayor and Aldermen in convention together which is the Board of Mayor and Aldermen.

Commission Pepino asked for City Clerk.

Deputy Clerk Johnson responded for the City Clerk only. He also in that process picked up a third point which he has alluded to in the last paragraph, and that had to do with 49-C:6 I believe it was. It is stating that provision of law provides that if you state that you have a non-partisan election, the form of the ballot must not include any party designation, so in 5.01 of the Charter now as it's written, it says you have a non-partisan election for all offices, and in Section 5.32(b), there's a provision that says the form of the ballot shall contain a party designation for all candidates, so you have to address that in some fashion.

Commissioner Hirschmann stated can I ask a question on that issue. When we sent that out to research, who did the research that came back that said we could do it?

Deputy Solicitor Arnold responded a number of people. I don't know what happened, but obviously...

Commissioner Hirschmann asked if a statute was missed.

Deputy Solicitor Arnold stated there are three words in there, and I didn't see them.

Chairman Dykstra stated I guess about the designation, okay. On the other one, we all thought we could, you know, have the Aldermen-At-Large abolished and evidently we cannot. Do you still feel that they're correct in the assumption or is there something missing?

Deputy Solicitor Arnold stated I don't feel they're correct, but I did speak to Susan Gorman.

Chairman Dykstra asked who is she.

Deputy Solicitor Arnold stated she is with the Attorney General's office. She didn't make a commitment other than to say she was not going to be sending a letter, but irrespective of whether I agree with their determination or not, the Statute makes it quite clear that it has to be sent to the Secretary of State and that if he makes a determination that it's not in compliance with the Constitution and laws by language that would correct it but then you cannot send it to the ballot if he determines that it does not comply.

Chairman Dykstra stated so he corrects it even though we say we don't think that there was anything wrong with it. He has the last word is what you're saying.

Deputy Solicitor Arnold stated he makes his determination. To contest that determination, the Board of Mayor and Aldermen would have to request that it be sent to Superior Court.

Chairman Dykstra stated which is time consuming, so we have no choice other than to try to send a legal document.

Commissioner Hirschmann stated I'd like to say something. The last week's letter from William Gardner, it didn't address that issue at all. It addressed two points, one about the City Clerk, and the other thing about the Aldermen-At-Large. Now, all of a sudden, he said those were his only two problems. All of a sudden, he invented another problem. I mean, who asked him to do that? Who asked him to write another letter and find another problem?

Chairman Dykstra asked was this sent to him the first time round. Was the R the D's in there when he saw it the first time and didn't come back and make a comment on it.

Commissioner Shaw stated it's suspicious.

Commissioner Hirschmann stated it is.

Deputy Solicitor Arnold responded it was in the preliminary report, and the staff did speak to Mr. Gardner as we were trying to make that determination whether it would be permitted or not.

Commissioner Hirschmann stated I have the letter that says these are my only two concerns, and now a week later all of a sudden, someone spoke to him on the phone and invented another concern. Hey, facts are facts.

Chairman Dykstra stated that does surprise me.

Commissioner Shaw stated that particular line is in the law though, isn't it.

Commissioner Cook stated that's in 49-C.

Commissioner Shaw stated it is in the law. Whether we like it or not, it's in the law.

Chairman Dykstra stated it's probably something he just overlooked.

Commissioner Shaw stated Madame Chairman, we have two choices, I think.

Commissioner Hirschmann stated next week there'll be another concern.

Commissioner Shaw stated all right, but we have two choices. One, we can have partisan elections. B, we can have non-partisan elections. That's our two choices, so somewhere we have to change the clause that he...and we can change it just as he...we can take the word designation out and leave non-partisan there.

Chairman Dykstra stated well, Bob, we can do anything we want.

Commissioner Shaw stated but we can go back to the very original thought that partisan elections. That's a thought.

Chairman Dykstra stated you're champion of original thought.

Commissioner Cook stated I'm not sure there are any original thoughts left because we've been around a few times. Just so I understand the import of the letter, we have three different issues in the letter that he's finding fault with in the Charter regardless of when they came up or who thought them up or whatever. To remedy the first one is we have to say that the Aldermen-At-Large positions if eliminated would have to be eliminated as of 2005, November 22, 2005, I believe. That would be the remedy to the first one. The remedy to the second one would be to eliminate as I think, I mean I really have a problem with the first paragraph on the second page, but assuming that we all have problems with something.

Chairman Dykstra asked where are you there.

Commissioner Cook stated I'm on the second page, on the City Clerk one. To remedy Gardner's objections on the second page, we would have to remove the provision about the City Clerk that the Mayor nominated, and the Aldermen elect which is what we say now and just put in a phrase that said the Mayor and Aldermen elect. That would be the way to remedy that, I suppose, and the third one I think...

Deputy Solicitor Arnold stated you'd have to say nominations have to come from both places.

Commissioner Cook stated well, that's the difference. I mean, we already have him being elected by the Aldermen or confirmed by the Aldermen, nominated by the Mayor. He's saying that elections by Mayor and Aldermen means nomination and vote comes from all of them which maybe it does.

Chairman Dykstra asked why should we have an Alderman. Why couldn't it be the Mayor?

Commissioner Cook stated all I'm addressing is what he said, and then the third one is what Commissioner Shaw said, the options are take out the with party designation or change it from non-partisan again.

Commissioner Shaw stated that's what our vote would be.

Commissioner Cook stated you need a motion.

Commissioner Shaw stated I believe that somewhere in the law, and I would like somebody to look it up, it says there that the City Manager or the Mayor makes the nomination for these positions. It's somewhere in there. We've read that.

Commissioner Cook stated there's a City Clerk Statute.

Commissioner Shaw stated I know that, but somewhere it says that particular thing. If we had the City Manager form of government, he would nominate the City Clerk, and this gives the impression that every year, every two years, the City Clerk is nominated, the way I read it.

Commissioner Pepino stated it used to be every two years. It used to be Solicitor, Finance. It used to be every two years, Joe Acorace every two years.

Commissioner Shaw stated it never was.

Commissioner Pepino stated we used to vote on them, Bob.

Deputy Clerk Johnson stated every six years.

Commissioner Shaw stated every six years, yes. He's right because every six years, and I never got to nominate a City Clerk. I could only veto, okay, and I would give you a hint that if we do go and we believe this particular issue, we don't look up something different, then I believe we put into the thing that the City Clerk will have a term. That we can do.

Commissioner Hirschmann stated that's what the RSA states.

Commissioner Shaw stated if the Mayor can't nominate him, then we should give him a term.

Chairman Dykstra stated the only way it could be changed too other than that actually or do it that way is to have an Amendment to the RSAs or have the laws changed. That's the only thing...

Commissioner Shaw stated that's the other method that if the laws are changed...

Chairman Dykstra stated I don't want to put forth a document that conflicts with any. It would just get shot down.

Commissioner Shaw stated I don't either, but I'm just saying this one here, there is something in there that says the Mayor can appoint. Somewhere in there...

Chairman Dykstra stated so you're asking for term limits for the City Clerk.

Commissioner Cook interjected term, not term limits. Does he have a six year term now, did you say?

Commissioner Shaw stated no, he has a zero term.

Commissioner Cook asked forever.

Commissioner Shaw responded it's forever.

Commissioner Pepino stated there used to be terms before the last Charter.

Deputy Clerk Johnson stated the present Charter states that it follows the State law.

Commissioner Cook asked and the State law doesn't prescribe a term.

Deputy Clerk Johnson stated it does not provide the term. When you eliminated the terms for the department heads, we did it also for the officers.

Commissioner Shaw stated in this here, I'm very sure that when they meet in convention, that would be when the new Mayor comes in, there would be a nomination made for the City Clerk at that time, and that he would have a term of two years which is what the Secretary of State has, two years. So I'm saying to you if we're going to do anything with the City Clerk, we'll give him a term.

Chairman Dykstra asked do you have a motion.

Commissioner Shaw stated well, no. I want to do them one, two, three personally.

Commissioner Pepino stated do the first one.

Chairman Dykstra stated the first one deals with the Aldermen or the non-partisan.

Commissioner Cook stated no, the first one is the Aldermen-At-Large.

Chairman Dykstra stated yeah, abolishing the Aldermen-At-Large. Okay, do we have any motions at all?

Commissioner Cook stated I would move that we, consistent with the Secretary of State's letter, make the effective date of the abolition of the At-Large positions if this Charter passes be I believe it was November 22nd, 2005.

Deputy Clerk Johnson stated that is a tabled motion.

Commissioner Cook asked that's already on the table. Then I would move that we take it off the table.

Commissioner Duffy duly seconded the motion.

Chairman Dykstra called for a vote. The motion carried.

Chairman Dykstra stated it is off the table. Now a motion is appropriate if anyone wants to.

Commissioner Shaw stated the motion has already been made.

Chairman Dykstra stated you just took it off the table.

Commissioner Pepino stated about five or six months ago, I think in December or November, just what this here says, I told you we had to do that. We had to give them another term, and they had to serve it out, and I lost that one, so here we are six months later looking at the same thing again. It's in the law. I researched the law then and read it.

Chairman Dykstra stated I know, but we got an opinion from the City Solicitor. He still stands by it, and evidently we have to do what...

Commissioner Shaw stated I could address that is the fact that maybe we were going to have an election in July where you would have been in error then if we had the July election for this Charter or if we had thought that the September election would have gotten rid of them, maybe we would have had the September

election. So the fact that you were right way back is that we have all of our options have been taken away from us.

Commissioner Pepino stated remember one thing Robert. I'm not always right, but I'm never wrong.

Chairman Dykstra stated none of us are always right.

Commissioner Shaw stated I'm consistently right.

Chairman Dykstra stated right now, that's been taken off the table. Is there a motion?

Commissioner Cook stated I move the question.

Chairman Dykstra called for a vote. The motion carried with Commissioners Duffy and Soucy duly recorded in opposition.

Chairman Dykstra addressed item 8 on the agenda:

TABLED ITEM

Motion that the proposed Charter revision be submitted to the voters in September 2003.

Commissioner Pepino asked why September.

Chairman Dykstra stated let's take it off the table for discussion.

Commissioner Cook stated I thought we were addressing the Secretary of State's letter.

Deputy Clerk Johnson stated those two items are on the agenda together as part of dealing with the Secretary of State's letter.

Chairman Dykstra stated these are the concerns that are in this letter, so we're moving them for discussion.

On motion of Commissioner Pepino, duly seconded by Commissioner Cook, it was voted to remove the item from the table.

Commissioner Shaw stated I had thought that we had said that we would have a September election if the Secretary of State had allowed us to remove them, so that's the reason for September. I'm opposed to September.

Commissioner Cook stated I would make a motion to amend the motion so that it say November, so that the motion be that we recommend the election be held at the general election in November.

Commissioner Pepino duly seconded the motion.

Chairman Dykstra called for a vote. The motion carried.

Commissioner Cook stated so now it's amended.

Commissioner Shaw stated amended, but it has to pass. Still, make the motion to pass it.

Commissioner Cook moved the question. Commissioner Pepino duly seconded the motion.

Chairman Dykstra called for a vote. The motion carried.

Commissioner Cook stated that was a motion to move the question. I think we now have to vote on the motion. I was calling the question.

Chairman Dykstra called for a vote on the motion as amended. The motion carried.

Commissioner Pepino stated unanimous.

Chairman Dykstra stated who said there's a five to four all the time.

Commissioner Hirschmann stated that's when the serious voters vote. Remember that.

Chairman Dykstra stated so now, we have basically taken care of this.

Commissioner Cook stated we have two other things in Mr. Gardner's letter.

Commissioner Pepino stated item two on Bill Gardner's letter.

Commissioner Shaw stated I would make a motion with regard to the second part that in regard to the Secretary of State's response that the City Clerk be given a term of two years, to be elected by the incoming Board of Mayor and Aldermen.

Commissioner Cook asked at their organizational meeting.

Commissioner Shaw stated at their organizational meeting.

Chairman Dykstra stated so it's basically nominated by the Board of Mayor and Aldermen, but it's a term for two years.

Commissioner Shaw stated whatever it says right here.

Commissioner Cook stated yeah, nominated and elected.

Chairman Dykstra stated he wants a term for two years. That's been clarified.

Commissioner Duffy duly seconded the motion.

Chairman Dykstra called for a vote. The motion carried.

Commissioner Duffy stated on item number three in Secretary of State Gardner's letter, I make a motion that under 5.32(b) that we delete the second sentence which refers to the ballot shall contain a designation of party affiliation, etcetera, etcetera, name and manner determined by the Clerk, to eliminate that so that that paragraph reads that candidates in each of the elective offices for the City shall be alphabetically by surname. Then it continues about for general election ballots, so on and so forth.

Commissioner Cook duly seconded the motion.

Commissioner Shaw stated I wanted to make an amendment to his motion. Is that permissible? If I can get a second to it. I would amend his motion to say that the elections not be non-partisan but partisan. So his motion is just to take away the designation. Mine amends his to make the elections partisan.

Commissioner Wihby duly seconded the motion.

Deputy Clerk Johnson stated may I just clarify that that amendment would include changing all of the ballot information as an Australian ballot.

Commissioner Shaw stated everybody has to sign up.

Commissioner Cook stated so this vote will be on the amendment.

Commissioner Shaw stated on the amendment only.

Commissioner Soucy asked would that apply to all candidates including School Board and ward office candidates.

Commissioner Shaw responded no, of course not. We're not allowed by State law to...

Commissioner Soucy asked but would that include ward office candidates.

Commissioner Shaw stated right, everybody.

Chairman Dykstra stated the School Board is mandated by State law.

Commissioner Shaw stated mandated by law. I mean, that was my presumption. He has said we can't put the designation on. Well, he's right.

Chairman Dykstra stated so you've moved for the partisan. You got a second. We had a discussion. Any further discussion? I want a roll call vote please on the partisan election.

Commissioner Cook stated no, it's on the motion for amendment of the motion.

Deputy Clerk Johnson stated the amendment is to make them partisan. In essence, it wipes out the first vote.

Commissioner Shaw asked for a roll call.

Chairman Dykstra stated I did.

A roll call vote was taken. Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted yea. Commissioners Cook, Duffy, Soucy, and Tessier voted nay. The motion carried.

Deputy Clerk Johnson stated we have five yeas, four nays to the amendment to make it a partisan election and change all related language, so your main motion as amended is your amendment.

Commissioner Duffy stated as the person that called for the motion that subsequently was amended, I'm withdrawing my motion.

Commissioner Cook stated and I'm withdrawing my second.

Commissioner Shaw asked how can you do that. They can't withdraw the amendment.

Commissioner Duffy stated it'll negate any amendment.

Commissioner Hirschmann stated I'll make a motion to pass what the amendment just passed.

Commissioner Wihby duly seconded the motion.

Commissioner Duffy stated wait a second. We've got a motion already on the floor.

Commissioner Hirschmann stated you withdrew it.

Deputy Clerk Johnson stated you withdrew your motion.

Chairman Dykstra stated all right, so that's it. So there is a motion on the floor now for partisan elections. Okay, who was the motion made by? Hirschmann seconded by Wihby, now we're going to call for a vote. Let's go with a roll call.

Commissioner Hirschmann stated silly games.

A roll call vote was taken. Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted yea. Commissioners Cook, Duffy, Soucy, and Tessier voted nay. The motion carried.

Chairman Dykstra stated okay, so we're back to partisan elections now.

Commissioner Shaw stated Madame Chairman, we sent our Charter to the Secretary of State, you know, and I find it wrong that we get instructions back. I realize that they have State laws, but we also should have rules that cities can govern themselves, and the particular motion that Mr. Hirschmann had made way back which on its face would seem, you know, non-partisan and allowing people to understand who we were which draws better government than we're now forced to take.

Commissioner Hirschmann stated somebody didn't like it. I got to somebody.

Commissioner Shaw stated he wrecked the whole thing.

Chairman Dykstra stated just to check with Carol, certainly the Charter we have proposed so far is addressing the non-partisan. There are some changes that have to be made again.

Deputy Clerk Johnson stated what we'll do is based on that last motion, we will reinsert all the Australian ballot language that was in there previously.

Chairman Dykstra stated so you already have it.

Deputy Clerk Johnson stated we have all the language. It's already been distributed to you once. It's basically in the Shaw proposal that first came to you.

Commissioner Duffy stated may I ask for a point of clarification. Assuming for the moment that this Charter were to pass, incumbents in elective office in the City that in fact are in federal positions would have...what action...would they have to resign.

Commissioner Cook stated no, because they would have been elected in a non-partisan election. The election in November is going to be a non-partisan election.

Commissioner Duffy stated so they would not be affected. It's just going forward.

Deputy Clerk Johnson stated there's I guess, and I'm going to bring this down to one person that's on the Board, my only knowledge of anybody with the federal government right now is Alderman Guinta. I don't know about the ward clerks or any of those. If they're working in the executive branch of the federal government, under a partisan system, they will not be allowed under the Hatch Act to run for office. Alderman Guinta is part of the legislative branch. It would not apply to him, but it would apply to anybody else who is in the Post Office or in any other executive branch.

Commissioner Duffy stated okay, but if there is an incumbent, they're not eligible to run at the next election, that's what I'm saying. I'm just looking for a clarification.

Deputy Clerk Johnson stated if they're an incumbent that's in there now, they were elected in a non-partisan election.

Commissioner Duffy stated but they finish off their term.

Commissioner Cook stated but if they're elected in November, they're elected in a non-partisan election the same time the Charter was done. They weren't elected in a non-partisan. Their party wasn't listed, so they've got two more years.

Chairman Dykstra stated so we have basically addressed the concerns of the DRA, the Secretary of State, so that basically makes everything fairly legal. This all goes to our attorney still.

Chairman Dykstra addressed item 9 on the agenda:

Discussion of other language submissions requested by the Commission.

Deputy Clerk Johnson stated at the last meeting, the Commission asked us to draft up some language for them. At the last meeting, you had requested that we go back and work on some language issues. We actually did two things. One is you have a new copy of the preliminary draft of the Charter. In there, if you take it home with you, you'll find there's some new language in there. The only thing that's in that document is language that was acted upon by the Commission. There were a couple of pieces where you acted on language, and we bolded those so that they'll stand out and you can look at those. This that I just handed out, the first page talks about the Water Commission because the Water Commission was one of the issues, and we also looked at Airport Authority on the same basis with regard to some of the similar problems that might be there. In the first instance, on the top of the second page of the handout, 2.02(b), it shows the current language, and then there's the proposed language. What we did is we inserted in essence the last sentence. We took the Airport and the Water Works Commission out of the second sentence and said the Board of Aldermen will nominate those Aldermanic representatives. If you go down to the proposed at the bottom of the page where the Water Commission is at 3.03(b), that is where we addressed that at the organizational meeting of the Board of Mayor and Aldermen, the Aldermanic representative shall be nominated by the Board of Aldermen and confirmed by a majority of the Board of Mayor and Aldermen. That's been clarified because 2.02 was just merely dealing with the authority of the Board of Aldermen. It doesn't deal with the full Board, so we placed that language directly under Water Commission language. That was basically the only change to that section. If you go to the next page with regard to the Airport Authority, we're basically doing the same thing.

Commissioner Duffy asked starting at at each organizational meeting.

Deputy Clerk Johnson stated at each organizational meeting. That just clarifies...the only other thing the question that came up also by the attorney was the powers that were being vested in the Aldermanic representative and the Mayor's representative. What we also did is we condensed that second sentence says the Mayor and the member of the Board of Aldermen shall serve as ex officio members of the Airport Authority having all the powers as vested in other

members coincident with the term of office. We added the Alderman to that sentence because he was not included there, and that's where the question came up about authority, so that it's clear that they have the same authority of any other member of the Commission. In the transition language which is right below it, we broke out the Airport and the Water because they are two different laws. They commit to terms at different times of the year, so what we're saying under the transitional provisions is that effective with the first meeting of March for the Airport Authority because that is what the Statute provides for presently, the Board of Mayor and Aldermen shall confirm an Aldermanic representative to serve on the Airport Authority. The Mayor and the Aldermanic representative so confirmed shall replace the Airport Authority members whose terms expire March 1st, 2004, and shall complete their terms coincident with their terms of office. What that's saying is that in March of 2004, that that is when the Mayor and the Alderman go in because that's when you have two people coming off of the Airport Authority. Instead of wiping everybody out and trying to create a space, we just naturally are going to replace the next two people coming off. Then it is basically going on to say that they will complete their terms coincident with their term of office which means then that January whenever the new Board comes in, every time a new Board comes in, somebody new is going to get appointed to that position and will serve out their term coincident with office. That puts it clear that they're serving their terms of office, that we're not throwing everybody off and then trying to put everybody on which hadn't been your intent in the first place. We did the same thing with the Water Commission. The Water Commission expires in January. We're saying effective January 6th, an Alderman shall be confirmed to serve on the Water Commission. The Alderman so chosen shall fill one of the Commissioner's positions whose terms expire in January, 2004. There are two positions on the Water Commission presently which will come up for appointment and will expire in January, so one of those people will be replaced with an Alderman at the Board's discretion. The Mayor is already on that one so we didn't have to address that.

Commissioner Shaw stated I'd like to make a motion.

Commissioner Duffy stated before a motion, could I ask for a point of clarification just for purely curiosity. Carol, do you know if there's any explanation why certain commissions have different dates as to the effective date of the appointment.

Deputy Clerk Johnson responded I think it depends on when the special legislation was put into effect in this instance. It clearly states. We looked at the special legislation.

Commissioner Hirschmann asked on the 2.02(b) proposed, if someone were to read that, they could construe that they were electing a Chairman of the Planning Board. Read that sentence. It should say that they're electing a Chairman of their own Board. Read that through. It looks like they're electing a Chairman of the Planning Board.

Commissioner Shaw stated I thought it says an Aldermanic representative.

Chairman Dykstra stated and the Aldermanic representatives...

Commissioner Hirschmann stated right, but if you read that sentence...

Deputy Clerk Johnson stated I can understand where you're coming from.

Commissioner Cook stated why don't just make a "its". Make a "its" then the Board would elect its Chairman, and that wouldn't refer to anything but the antecedent.

Commissioner Duffy stated good point.

Commissioner Shaw stated after that technical change, could I make a motion. I would like to make a motion that we approve 2.02(b) as proposed, 3.03(b) as proposed, and 3.03(a) as proposed, and 10.03(d) as proposed. I'm not doing the last one.

Commissioner Cook stated (c) and (d).

Commissioner Shaw stated (c) and (d), whichever.

Deputy Clerk Johnson stated because you're leaving the current 10.03(c), and you're inserting (c) and (d).

Commissioner Shaw stated I haven't done anything about 6.04(d).

Commissioner Hirschmann duly seconded the motion.

Chairman Dykstra called for a vote. The motion carried with Commissioners Cook, Soucy, and Tessier duly recorded in opposition.

Commissioner Duffy asked can I assume that Commissioner Shaw's motion included the language change that Commissioner Cook referenced on 2.02(b).

Commissioner Shaw responded yes, it did. I had said that in the beginning, that the word “its” should be in. I didn’t do 6.04(d) because it is more than...I didn’t know if anybody wanted it.

Deputy Clerk Johnson stated the next section that we had done in our handout is a technical correction, 5.11(c). Whichever is sooner, that was pointed out by Commissioner Wihby. We would suggest a motion to make that correction.

Commissioner Soucy so moved. Commissioner Shaw duly seconded the motion.

Chairman Dykstra called for a vote. The motion carried.

Deputy Clerk Johnson stated with regard to the fallback budget, we were asked to do some suggested language for that as well. We were asked, and it is attached here, we were asked to research...Commissioner Cook had brought up that there were other provisions in the State law that could be accepted in Senate Bill 2 towns. The legislation is attached. It sort of underlined that section where it says “reduced and increased as the case may be by debt service” etcetera, etcetera. So we took that, and we came up with some proposed language if you wanted to incorporate that language. That’s the proposed language that we are suggesting.

Commissioner Cook stated my point in asking for, and I appreciate the Clerk’s getting this information for you, is we had had discussion all through the existence of this Commission that towns were able to have the fallback budget being the prior year’s budget period, and the language that we had, the majority had adopted, used that provision as the budget, and my question was could we also have the failsafe provisions that are actually in town budgeting processes which is what this has because otherwise you could be doing a lot different thing than you thought you were doing. If in fact you wanted to put the City on the same basis that towns were on, it ought to have the same escape valves, and I think having just seen this for the first time, it’s my impression this does it, so I appreciate that.

Commissioner Shaw stated I had thought that in the towns that they could not increase the bottom line. I don’t sense in this here that it says that you spent a hundred million last year, that you’re allowed to spend only a hundred million this year. That’s what I thought a fallback budget was. It doesn’t mean that the highway department would get as much money as last year. It means they must fit all the City’s expenditures into the bottom line of last year. I sense in this here that it allows them to increase by debt service and I presume contracts, so if teachers...

Deputy Clerk Johnson stated it says reduced or increased in the State law that’s attached.

Commissioner Cook stated yeah, the State law on the next page is the town statute.

Commissioner Shaw asked which says what. I thought the bottom line was...

Commissioner Duffy stated "previously incurred or mandated by law".

Commissioner Shaw stated whenever I've seen in the paper, it's very seldom, I have seen that towns fail to pass their budget that they have to go back to the governing body and reduce their spending to reach the bottom line of last year. Why do they do that if they're allowed to increase the budget?

Commissioner Cook stated as I understand it, if the town's proposed budget in the warrant article is \$25,000,000.00, and the voters go to the election, and they vote against the \$25,000,000.00 budget and the year before's budget was \$21,000,000.00, under the State law provision ten that's here, it goes back to the \$21,000,000.00, but if there are legal requirements that have already been passed by the voters on a long term basis for debt service and what not, that would increase if that increases, and if there are contracts that increases, but if there were one time items in the past budget that have gone away as required contracted things, they come out of it, so it sorts out, but it's not just an automatic \$21,000,000.00, nothing else. You can't violate the law by getting there. By doing that, you can't also violate something that you've legally adopted previously.

Commissioner Shaw stated could I ask Mr. Cook a question. Is labor contracts considered one of the contracts?

Commissioner Cook responded contracts are contracts. I would assume a multi-year contract is one of the things.

Commissioner Shaw stated well then there's no fallback budget because if you've given away a contract...I mean, you can adjust the budget of a City by...you can meet within that thing, but you might not have a Mayor because you have to eliminate the Mayor's position because you want to save \$68,000.00.

Commissioner Soucy stated no, you eliminate the salary.

Commissioner Cook stated except the City Charter makes you pay him \$68,000.00.

Commissioner Shaw stated I didn't know that contracts...

Chairman Dykstra stated if you feel uncomfortable with it, I mean you could stay with the original language without the additions, but there is another letter here. Kevin Clougherty.

Deputy Clerk Johnson stated we took the fallback language that we were suggesting just to see if there was something that Kevin wanted to add to it, and he submitted a letter back to us, and he's just saying it remains the opinion that the language contained in the current City Charter should be preserved which is not the language that's in the proposed Charter anyway.

Chairman Dykstra stated we'll file that.

Deputy Clerk Johnson stated I just wanted to make sure you saw it.

Commissioner Shaw asked could I make a motion.

Commissioner Hirschmann stated I want to do some reading.

Commissioner Shaw stated I would make a motion that 6.04 be adopted with the language changed slightly. The budget of the prior fiscal year reduced or increased as long as the bottom line is not increased. So the budget can be changed. Budgets can be changed in between by line item. Budget line items can be changed, reduced or increased as long as the bottom line is the same.

Commissioner Duffy stated that's preposterous.

Commissioner Shaw stated the thing is that if the bottom line, if the Mayor comes in and says, "Well the fallback is going to have to go up because of debt service, because of contracts and other obligations," you have to do that, but at the same time, the citizens want the bottom line to be stationary. The citizens want the spending level, in other words if the City spends \$100,000,000.00, the City can only spend \$100,000,000.00 next year. That's it. That's what we considered, I considered a fallback is the prior year's budget. To me, the prior year's budget is an infinite amount of money, x amount, but it must have to be changed according to Brad Cook and other people, and I agree that it needs to be changed, so increased...

Chairman Dykstra stated okay Bob, we still have the original in the Charter that we proposed under fallback provisions. You know, that's what we had voted on last time. If you're not comfortable with that, page 23, the original, the one that's in our existing Charter revision now, fallback provisions. Instead of making things more murky, if you feel that's what...

Commissioner Shaw stated I think that we made it wrong when...I think that when the people came before us and were against the fallback provision, their impression, department heads especially, is that they're only going to get what they got last year. In my opinion, that is not a correct interpretation. My opinion is that the Board of Mayor and Aldermen must fit the City's budget into the amount of money that was spent last year. There's a difference there. There is a definite difference.

Commissioner Hirschmann stated what we've already adopted is pretty clear.

Chairman Dykstra stated we've already adopted this, and what I'm saying is that I'm wondering how far we can go before we have to resubmit it back to the Secretary of State, and you know, if you're going to make these kind of changes.

Commissioner Hirschmann stated leave it alone.

Chairman Dykstra stated you had no problem with that. Do you have a problem with it now Bob because it seems like the more we go into it, the more like I said, I hate to use the word murky, but it's not clear.

Commissioner Shaw stated there is a procedure in here to reopen the budget.

Chairman Dykstra stated we have it right here (d) on page 23. We voted on that last time. These were some changes that were suggested. It doesn't mean you have to go with them or not. I mean, if there's too many changes, we might have to go back.

Commissioner Shaw stated "If the Board of Mayor and Aldermen shall fail to adopt appropriation resolutions for the ensuing fiscal year as provided herein, the budget as originally submitted by the Mayor..."

Deputy Clerk Johnson stated Commissioner Shaw, if you look at 6.05(c) transfer of appropriations, I think that that would provide them what you were stating under the law. I guess if you're going to say the bottom line is the same if you have an increase and a decrease, I think that makes it a little more confusing. In the transfer of appropriations, there's more to move money around to accommodate that in the context of the thing there. If you're saying that, then they won't be able to change the bottom line anyway.

Commissioner Shaw stated I just want the bottom line not to change. I don't favor the fallback. We've never used it. I don't think we should use the fallback, but if they can't get their act together, then they're going to be stuck with a lower spending level, so they have to get their act together. That's the option.

Commissioner Hirschmann stated I just wanted to make a point that on the fallback provision that we did adopt that the law has changed since we have written this, and I would like reference in parentheses the law that's been enacted so that someone reading this Charter would know that the law has passed and that we could use a fallback budget.

Commissioner Shaw stated I don't want to take another vote on that issue.

Commissioner Hirschmann stated we don't have to. It's been enacted, but it just should be referenced.

Commissioner Cook stated I think you'd put that in the commentary to the Charter, saying people think this provision isn't legal, the law passed the chapter such and such of the laws of 2003.

Chairman Dykstra stated maybe we should just leave it there. Leave it alone because you know, when the session meets, they can change it again. I mean, the more we get into this...I mean, I prefer...

Commissioner Hirschmann stated the Governor passed something, and I'd say you just reference it. That's all.

Commissioner Shaw stated so we're not going to accept 6.04. There's no second to my motion which I withdraw quickly.

Commissioner Pepino asked you want to leave this in the Charter the way it is.

Chairman Dykstra asked you didn't make a motion on this anyway, did you.

Commissioner Shaw stated I did, but I withdrew it.

Chairman Dykstra stated you withdraw the motion. Did we withdraw the second? Who made it?

Commissioner Soucy stated there was no second.

Commissioner Cook stated Madame Chairman, I'd like to make a motion to adopt 6.04(d) as proposed by the City Clerk's office.

Chairman Dykstra asked was this proposed by you.

Commissioner Cook stated as written. They didn't propose it, as drafted by, not as proposed by. I won't get them in trouble.

Commissioner Soucy duly seconded the motion.

Commissioner Cook stated the reason is obviously as was being suggested a couple minutes ago in this discussion, we talked about this for a long time, about having the same rights in the City that the towns have, and this would give us exactly the same situation that the towns have, and it wouldn't put us in a situation where legal obligations that had previously been enacted by the City would create an even more exacerbated situation. I agree with Mayor Shaw. I don't think that a fallback budget has ever been used. I don't think it's going to be used. It's incumbent on the Mayor and Aldermen to come up with a budget and come up with one that works for the City, but if they can't, then this has the escapes in it that will keep a train wreck from occurring and without this very frankly, this Charter is even more objectionable than with it which is fairly objectionable.

Chairman Dykstra stated just to address that, there was no problem with this from the Secretary of State or the Department of Revenue Administration.

Deputy Clerk Johnson stated what you have in there is legal.

Chairman Dykstra stated right, so what we have in there is legal to begin with.

Commissioner Cook interjected I didn't say it wasn't legal. I said it was stupid.

Chairman Dykstra stated stupid, well, you know. I thought the last Charter was stupid so I mean we all have our rights, but the thing is is that even though I want a fallback budget, it didn't necessarily mean that I wanted everything towns had you know, but I wanted the fallback budget. There was a second, and we had a discussion.

Chairman Dykstra called for a vote. The motion failed with Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra duly recorded in opposition.

Chairman Dykstra stated so basically we have the original language staying in there, correct.

Deputy Clerk Johnson responded yes.

Chairman Dykstra asked anything else we have to address on this. If there are some parts that Commissioner Shaw did not make a motion on...so we basically have addressed all the concerns of the Department of Revenue Administration and

the Secretary of State, correct. This is moving on to the election for November, but it has to be reviewed by our attorney.

Commission Cook stated Madame Chairman, I'd like to make one more motion before we do whatever we're going to do. I'd like to make one more motion, and I'd like to make a motion that we change the effective date from on passage to the beginning of the fiscal year the following year which means July 1st, 2004.

Chairman Dykstra stated that's going to affect all the commissions and everything. It's going to affect all the Commissions that are supposed to start in March.

Commissioner Cook stated if we could have a second, I'll explain why.

Commissioner Tessier duly seconded the motion.

Commission Cook stated the reason for my motion is we presently have a situation where the Aldermen-At-Large, if this passes because obviously an effective date is premised on passage of the Charter. Should the Charter pass, Aldermen-At-Large who would be eliminated still serve two more years. Non-partisan elections continue, have been held, and nothing else happens for two more years unless there's a special election which would be non-partisan starting with whenever the first one was after I suppose. The budgeting process would be constricted in the first year because of the transition because we have the present people serving until January because they're in a present term, but we would be coming up with a budget process that required a budget to be adopted by April, so we would have had a very constricted budget process. I don't see any reason in...I didn't see any reason to have it effective on passage, but I suspect there was one, but with those changes that have been made, I don't think the substance of stuff coming into effect that fast outweighs the opportunity for the City to plan for that transition and have one more cycle to get there, and I think it would be a much more orderly process than have it effective on whatever day in November happens, and then have everybody have to scramble around to figure out what it means. This is as I've said before about effective dates, this is government process. This is government structure, and it needs to be implemented in an orderly fashion, and I just think that, you know, the couple of terms or the couple of elected officials or what not that need to go into effect are not outweighed by making sure it's implemented in an orderly way, and I have a feeling that the effective on passage thing address some of those other things because it was deemed that it was possible to make certain changes faster.

Commissioner Shaw stated I'm opposed to that because I don't think that we're allowed to reduce the compensation, and I would consider the benefits given to people as compensation, so that on the day they take office, you see, I want their

compensation to cease for certain aspects of it. So, I'm opposed to that provision. The current Mayor can easily prepare the budget by April, so come NovemberX and he is going to start his fifth, sixth year of term, he has plenty of time to do the job, and if he isn't the current Mayor, okay, then he would I presume help the person who is going to take his place to accomplish the task, and we gave the new person an extra month, all right, and they're at the procedure right now...

Commissioner Cook interjected we didn't give the person an extra month because in the transition...

Commissioner Shaw stated it's in February to produce his budget.

Commissioner Cook stated I thought you meant the one before that. Excuse me.

Commissioner Shaw stated the gentleman that's there now could easily produce the budget, so I'm opposed to...

Commissioner Hirschmann stated I'm opposed as well as waiting till July because I thought that upon passage meant that the school district was going to listen to the new Charter and come up with their budget sooner, and that was going to help the school problem that Commissioner Tessier brought up, so I thought the Mayor would do his budget sooner, and it was all for those reasons that we made that sooner rather than later as well as the spending provisions that we put in the Charter, so I think that all those things...transitionally, you're going to have different dates, and one of them is going to say upon passage, and other things are going to say 2005.

Chairman Dykstra called for a vote. The motion failed with Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra duly recorded in opposition.

Chairman Dykstra stated that's five. I just wanted to make sure.

Commissioner Pepino asked you going to stick it to the school board.

Chairman Dykstra responded no, no, we're going to keep it the way it was.

Commissioner Pepino stated well, the other way you would have.

Chairman Dykstra asked is there anything else that needs to come before us.

Deputy Clerk Johnson stated some time, I would just like a motion to send the final report to your attorney for review. A motion to refer it as the final report to the attorney for review.

Commissioner Cook stated just clarification on that. Assuming and this is only a procedural question, if we send it to the attorney, and the attorney sends it back and says everything is wonderful, do we need to meet again to then send it to the Board of Mayor and Aldermen because if we don't, then the motion shouldn't be to send it to him for review, it ought to be to send it to him for review and to the voters for passage on his approval.

Chairman Dykstra stated I think we send it to them. If it passes muster, then it automatically goes, doesn't it?

Commissioner Cook stated not if we haven't voted to send it to them. I'm just trying to say if it's reviewed by the attorney, and it passes muster, I don't think we need another meeting to say okay, fine, thank you.

Chairman Dykstra stated okay, then we can make a motion to basically do that, to send for review and if it's acceptable to send it to the Board of Mayor and Aldermen.

Commissioner Shaw stated I need to make a motion.

Chairman Dykstra asked another one, before this one.

Commissioner Shaw stated in regard to the content of this Charter before we move to send it anywhere else, so my motion would be this, this is to make the system fairer to everybody. Any employee of the City shall not be re-employed by the City while collecting a pension from State or local sources. In other words, the type of people that could not be re-employed is the same way as a...this would not apply to anybody who is currently...

Chairman Dykstra asked do we have a second on this.

Commissioner Pepino stated I want to hear this.

Commissioner Shaw stated we have people now that can not work for the City if they retire from the City, but we have people who retire from the Police Department and the teachers' pension who can be employees of the City...

Commissioner Pepino interjected and the Fire Department.

Commissioner Shaw stated but a City employee can't go the other direction. A City employee cannot collect his pension and go to work for the City again.

Chairman Dykstra stated but yet a person can collect a pension and run for office.

Commissioner Shaw stated we're not talking about that. We're talking about people who retire from the school side or the police side of the pension plan and then can come back.

Commissioner Soucy interjected that's a State pension.

Commissioner Shaw stated it doesn't seem to me to be fair for half the employees.

Commissioner Tessier stated if you got the retirement from the State such as me...

Commissioner Shaw stated if you got the pension from the City, though.

Commissioner Tessier responded I draw it from the State.

Commissioner Shaw asked where did the State get the money.

Commissioner Cook stated she collects it from the State retirement system.

Commissioner Shaw stated I know where she collects it, but where does the State retirement system get the money for it.

Commissioner Tessier stated what I'm saying is that if I chose to run for an office, I couldn't.

Commissioner Shaw stated you're not an employee if you run for an office.

Commissioner Tessier asked does that mean that I couldn't work in the polls in Ward 1.

Commissioner Shaw stated no, that means that you can't be an employee that works at the City Clerk's office.

Commissioner Cook stated there's no second to this, but if somebody has worked for the State Police, has never worked in the City. The money didn't come from the City, forget the City, but your motion would have this affect. Somebody has worked for the State Police and retires, and we decide that that person would be the best director of X that Manchester could possibly have, and we want to hire the person, and the person is not available because they've served their time. They've got their pension, you know. Is this going to apply to military pensions too, somebody that's been a lifetime person? You want a federal one too? I mean, this is crazy.

Commissioner Shaw stated it might be crazy but why is...all right, let it go. The State is already concerned about this, that people are collecting pension plans.

Chairman Dykstra stated we don't have a second, Bob, but we appreciate it.

Commissioner Pepino stated after last night, when I read the paper this morning about our retirement system going \$900,000.00 in the hole, and they've been thinking of moving their retirement system from here to Concord, you'd think they would move that.

Commissioner Shaw asked all City employees.

Commissioner Pepino stated that's right. It would be the last one left, and this wouldn't have happened.

Commissioner Shaw stated double dipping.

Commissioner Pepino stated so, I kind of agree with this somehow but not all the way because they could move this. They could move this retirement system tomorrow if the employees would say move it, and if they moved that tomorrow, there would be no need for this.

Chairman Dykstra stated if you could do it through legislation or some other means, that's fine, but right now a motion certainly is...A motion would be in order to send this to our attorney for review, if acceptable sent to the Board of Mayor and Aldermen to be sent to the voters. You're not making that motion?

Commissioner Pepino responded no. Is there something now that says City employees can't do this? There's nothing in there at all now.

Commissioner Hirschmann stated we should do that at least.

Deputy Clerk Johnson stated if you're a City employee, and you are in part of the State retirement system such as the police or the teachers, when you retire, you can come back and you can work for the City as a non-affiliated person and receive full pay, benefits as the non-affiliated.

Commissioner Shaw stated and amass another pension.

Deputy Clerk Johnson stated you could become part of another retirement system, and that is what he's trying to prevent. You can't be a non-affiliated and do the reverse necessarily unless you go to work for the State. That was what he was

trying to address. That is even if you were a City employee, you could not be re-employed if you were collecting any kind of a pension.

Chairman Dykstra stated this still could be addressed through legislation. How about ordinances to the Board of Mayor and Aldermen? I mean right now, that's something that everything came up through the discussions. I mean, that's up to you. Does anybody want to make a motion to send this?

Commissioner Pepino stated yeah, I'll make the motion to send that along.

Commissioner Shaw stated that's not this. He's not sending that. They're sending this.

Chairman Dykstra stated there was no second to that, so I've really just allowed you to discuss it all. Now, right now we need the motion to...

Commissioner Hirschmann stated why don't we discuss this. He's not done.

Chairman Dykstra asked are you seconding it now. I just allowed discussion because it's our last meeting.

Deputy Clerk Johnson stated Commissioner Wihby has made the motion to send it to the attorney for review.

Chairman Dykstra stated oh, you made the motion on that. I didn't hear you. Okay, wonderful. Do we have a second?

Commissioner Hirschmann asked can we heard on this, just to finish this off.

Chairman Dykstra stated there's no second on that, Commissioner.

Commissioner Hirschmann stated I told you I'd make a second just to get it over with because we're not done discussing it.

Commissioner Pepino stated we were just discussing it with Carol. Carol was explaining this to us.

Chairman Dykstra stated she's just explained it. Do you have anything further?

Commissioner Shaw stated he's made a second for a motion.

Commissioner Pepino stated I'll second it then.

Commission Cook asked could you tell me what the motion is please.

Deputy Clerk Johnson stated any employee of the City shall not be re-employed by the City from any State or local...

Commissioner Cook stated I thought he made a motion to send it along for review.

Chairman Dykstra stated Commissioner Wihby did, but in the meantime, he decided to second his motion.

Commissioner Soucy stated no, Commissioner Wihby was sending the whole document.

Commissioner Cook stated right now, there's a motion. I know what he was doing. He was doing what you guys had been talking about. Somebody made a motion to do something about this, and Commissioner Pepino I think, yeah, but then he said, well, then I'll second it. So then I got confused because he made the motion. Is this a motion to send this for review to see what could happen to it, and if so, who's the report coming back to, and when because we're never going to meet again.

Chairman Dykstra stated this is a motion, and we're just discussing it. It doesn't mean it's going to go. He didn't have a second. I allowed you to discuss it.

Commissioner Hirschmann stated I seconded it for discussion because it has merit on the facts. People can retire from the Police Department, and then they can go and take a civilian job right inside the Police Department just as our Deputy Chief, the number two guy in charge of administration, retired, Mr. Robinson about two months ago. The next day, he is hired to work in the evidence room, so he's collecting a pension in one pocket from the taxpayers, and he's working dutifully in the evidence room. So he has merit in what he's saying. People can get two paychecks out of the City. Is it right? Not exactly. Are we going to address it in the Charter? It's a state system with the police, fire, and teachers are doing this. I don't know how you address it. We should have taken this up earlier, but that's not to say that we couldn't pass something that says other City employees can't retire from department X and work in Department Y and collect...

Commissioner Cook stated we could actually return the favor. We could return the favor and refer this to the Aldermen the way they referred something to us to begin with.

Commissioner Hirschmann stated the guy had an idea that...

Chairman Dykstra stated Carol said they can't do it, just for your information.

Commissioner Shaw asked what was that.

Chairman Dykstra stated that they couldn't do that now, she said.

Commissioner Shaw asked what.

Chairman Dykstra stated what he had just asked about.

Deputy Clerk Johnson stated they can't be in the pension system twice, basically.

Commissioner Shaw stated you couldn't get done and go to work at the School Department as secretary.

Commissioner Hirschmann stated that's not true.

Commissioner Shaw stated she can't.

Commissioner Hirschmann stated that's not true what you're saying because our Commissioner of Welfare is probably collecting a pension, and he's elected, and he's collecting on a pension, so I mean, it happens. So it does happen.

Commissioner Shaw stated that's elected.

Commissioner Hirschmann stated it's still taxpayers' money, I don't care.

Chairman Dykstra asked so isn't the Mayor collecting a pension.

Commissioner Pepino stated right.

Chairman Dykstra stated okay, you're saying people can run for office and still get paid by the City.

Commissioner Shaw stated I said specifically employee versus elected. Any person on the State system can run for office.

Commissioner Hirschmann stated good for you for bringing it up. I think it needs to be discussed.

Chairman Dykstra stated maybe it's something that you could do in the Legislature or whatever.

Commission Pepino stated I move to send it along for research.

Chairman Dykstra stated all right. There was a second, a motion. I guess, we're going to have to take a vote on this.

Commissioner Soucy asked what are we voting on.

Commissioner Cook stated to send that along to research.

Commissioner Hirschmann stated I'm going to withdraw my second. We just discussed it. It's a State thing we're not going to mess with.

Chairman Dykstra stated it's withdrawn. Now, we have a motion on the floor from Commissioner Wihby to send this document for review...

Deputy Clerk Johnson stated and if legal review accepts it, then it's accepted as the final report to be sent to Board of Mayor and Aldermen.

Chairman Dykstra stated Board of Mayor and Aldermen who sends it off to the voters.

Commissioner Pepino duly seconded the motion.

Chairman Dykstra stated all in favor.

Commissioner Cook stated no, roll call.

Chairman Dykstra stated oh we will have a roll call, no problem. We cleared up all the legal stuff.

Commissioner Duffy asked can we get a minority report in.

Commissioner Cook responded oh, sure.

Chairman Dykstra stated can't we address it on the legislative side. It's not that it's dead. It's a very good point, and I agree with what he said. I agree.

Deputy Clerk Johnson asked did you want a roll call on that motion.

Chairman Dykstra stated yes, roll call was requested by Commissioner Cook.

Commissioner Cook stated I would just as a question...there will be a report on this Charter recommendation. I assume there's a requirement there's a report that

summarizes the Charter. I would assume that anyone who dissents as happened in the last Charter has the right to send a minority report with a certain number of words.

Deputy Clerk Johnson stated right. It has a certain number of words, and we would ask that that go forward...

Chairman Dykstra stated why don't we take our vote, and we can still discuss.

Commissioner Shaw stated we have to discuss his motion.

Commissioner Cook stated I didn't make a motion.

Chairman Dykstra stated we're in the voting mode, and we're going to vote now, a roll call. You can discuss all you want after we take this vote.

A roll call vote was taken. Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted yea. Commissioners Cook, Duffy, Soucy, and Tessier voted nay. The motion carried.

Deputy Clerk Johnson stated we have five yeas, four nays. That motion carries. There are two things that I would like to state. One is that this would be your final report. If Attorney Waugh comes back with any issues at all, we will immediately schedule a meeting for the Commission. It would have to be held prior to June 18th because that's when you have to submit your final report. Next on that would also be the reference to minority reports. There are four members who have voted in the minority. They are entitled to do a minority report. There is a provision in the Statute as to how many words, etcetera. You can certainly all contact the Clerk's office. We will be working on this.

Commissioner Duffy asked can we make that request at this time, that the Clerk's office provide us with...I'm following up on the comment made by the Clerk. I'd like to have the Clerk's office provide those dissenting members have an opportunity to review what the provisions are for a minority report.

Deputy Clerk Johnson stated as soon as I get the document done, it's my intent to mail it out as the final report to all members.

Chairman Dykstra stated the past minority. You can address what you want to.

Commissioner Shaw stated I would like to find out from the Clerk, and maybe she could inform us, the last time, I'm very sure that the minority report was filed.

Chairman Dykstra stated yes, you're right, and we'll have to get that.

Commissioner Shaw stated filed, that on a motion by the committee of X, the minority report could also be filed. So, in other words, what was good for the goose last time ought to be good for the gander this time. Just the fact that there are four nos versus one no doesn't sound to me as fair over time.

Chairman Dykstra stated clarification. Carol, what you're saying is that of course, everybody has a right to a minority report. I remember. I served on that Commission with Commissioner Shaw. He did file a minority report. I guess the majority of the members filed it, so it never got out in public, right?

Commissioner Shaw stated that's right.

Chairman Dykstra stated is that what happens, filed. What happens to a minority report, Carol?

Deputy Clerk Johnson stated a minority report would be filed at the same time as the final report is filed, and I would file the same with the Board.

Commissioner Shaw stated the last one was denied to be filed.

Deputy Clerk Johnson stated I was not part of the last process.

Commissioner Shaw stated I would make a motion that the minority report be received and filed.

Deputy Clerk Johnson stated I will check the Statute and let you know.

Commissioner Cook stated I'm willing to live with whatever the Statute says.

Commissioner Shaw stated or prior history.

Chairman Dykstra asked do you want to have a second on that.

Commissioner Pepino duly seconded the motion.

Deputy Clerk Johnson stated I think Commissioner Shaw submitted it on his own last time.

Commissioner Shaw stated I wrote it, if you want a copy.

Chairman Dykstra stated there's a motion on the floor by Commissioner Shaw that the minority reports be filed. We have a second by Commissioner Pepino. Any discussion on this? If there is none, I'm going to call for a vote.

Deputy Clerk Johnson asked you're going to file before the date..., before the submission.

Chairman Dykstra stated fine, that's what is his motion. I mean, we know they're coming forward, so if we want to read them, fine, but they will not go forward with the main report.

Commissioner Hirschmann stated received and filed.

Commissioner Cook stated that's fine.

Chairman Dykstra stated okay, but we have to vote on this. Please. All in favor say aye.

Commissioner Wihby called for a roll call.

Chairman Dykstra stated okay, roll call vote on the motion to file the minority report which they have a right to make, but just to file them as they did with...I understand what you're saying. That's not a problem.

Commissioner Shaw stated it was good for me.

Commissioner Pepino stated move to file the majority report too.

Chairman Dykstra stated that's fine. Well, we don't need a majority report, I guess.

Deputy Clerk Johnson stated so you want to receive and file any minority reports.

Chairman Dykstra stated now, let's just do this please.

Commissioner Hirschmann asked can't we stick to the RSA.

Commissioner Shaw stated if we followed the law, the law would say that, but they must have broken the law for...

Chairman Dykstra stated well no, evidently they have a right to a minority report, but they have a right to vote to file it like the Board and Aldermen going by their

rules. Now, we're taking a roll call vote on the motion to file the minority report, to receive and file the minority report.

Commissioner Shaw stated he's reading the law.

Chairman Dykstra stated they received it last time, Tom. We don't have to...let's just do it.

Deputy Clerk Johnson stated there's nothing in the Statute that states one way or the other, so if submitted as to the Commission, it can be received and filed. It's still a public document.

Chairman Dykstra stated exactly.

Commissioner Shaw stated it is a public document.

Chairman Dykstra stated so, we're in the voting mode now. A roll call vote, please.

Commissioner Cook stated just a point of clarification. If I vote against this, because I am so totally confused, if it is received and filed, and it is a public document which is what I assumed was going to happen when we submitted it, that it was going to be filed with the City Clerk's office.

Chairman Dykstra stated it doesn't go with the report to the Board of Mayor and Aldermen.

Commissioner Duffy asked it doesn't.

Chairman Dykstra responded no, because his did not.

Deputy Clerk Johnson stated that's what the motion is, not to file...

Commissioner Duffy stated I don't know what his did...

Commissioner Cook stated well, we sent it to every one of the Aldermen, so that's irrelevant.

Commissioner Shaw stated and you could do the same.

Commissioner Cook stated well, and I intend to, but I'm just trying to figure what I'm voting on. If I don't vote yes, I mean if I vote to file it...

Commissioner Duffy stated it gets buried.

Commissioner Cook stated it doesn't get buried because it's going to be public because we're going to file it with *The Union Leader* too, but that's not neither here nor there. I'm just trying to figure out the vote. Please. It's filed. It becomes a public document. If this motion failed and it's not voted to file it, then what happens to it because the Statute doesn't say and there's nothing on it. I mean, we may be better off to do what he said because then it becomes a public document.

Commissioner Hirschmann stated it's in the minutes of our meetings.

Commissioner Shaw stated I think you should vote the way you did the last time.

Commissioner Cook stated I don't think we voted on it the last time.

Commissioner Shaw stated you did.

Commissioner Pepino asked everything we do, isn't it on the Internet.

Chairman Dykstra stated right now, we're in the voting mode. I think this is going a little overboard here. There's a motion to receive and file the minority reports. We have a second. We are now taking a roll call vote. Vote your conscience. Just vote.

A roll call vote was taken. Commissioners Cook and Duffy abstained.

Commissioner Hirschmann stated well, it you received and filed his. I'll vote for him to receive and file yours. How's that?

Commission Cook responded I don't know what we did with it.

Commissioner Hirschmann stated that's fair.

Commissioner Cook stated I don't know what we did with it.

The roll call vote continued. Commissioners Hirschmann, Pepino, Shaw, and Dykstra voted yea. Commissioners Soucy, Tessier, and Wihby abstained. The motion carried.

Deputy Clerk Johnson stated we have four yeas, five abstentions.

Chairman Dykstra stated the motion fails.

Commissioner Cook stated the motion fails.

Commissioner Soucy stated she voted yes, so the motion fails.

Commissioner Shaw asked the motion fails when people abstain. The majority voted for it.

Chairman Dykstra stated parliamentary question here.

Commissioner Soucy stated it's not a majority vote.

Commissioner Cook stated I don't know the answer to that.

Chairman Dykstra stated they are saying so they weren't here. It's like they didn't vote.

Commissioner Pepino stated if they abstained, they didn't vote.

Commissioner Hirschmann stated it's not a no vote.

Commissioner Cook stated they were here, so maybe it passed four to nothing.

Chairman Dykstra stated it is four to nothing. They abstained. They didn't vote. When you abstain, you don't vote. We have had abstentions here, and it was a vote of eight.

Commissioner Soucy stated but that's a majority of the members.

Chairman Dykstra stated it's called by me that the motion passes that it's filed. The chair is the parliamentarian. I think I read that somewhere.

Commissioner Hirschmann asked if the legal review comes back that we have to reopen the Charter, and we do have to meet again, I'm putting everybody on notice that I went along with a few of you people to put some things in this Charter, and you haven't played ball whatsoever. So if we do meet again, I will be pulling out all your little tidbits that you stuffed into this Charter, and I voted for you, and I'll pull them out, and we'll get rid of them. That's it.

Chairman Dykstra stated they have a right to vote.

Commissioner Shaw stated we better not meet, I guess. I move we adjourn.

Commissioner Duffy duly seconded the motion.

Chairman Dykstra stated before we adjourn, his hand was up. I didn't see it. I'm sorry, go ahead.

Commissioner Shaw stated we adjourned.

Chairman Dykstra stated Bob, he had his hand up.

Commissioner Pepino stated I am very surprised that we took a vote tonight for this Charter to pass July 1st and bypass the School Department for April 15th, and the Aldermen argued two hours about it. We've talked to all these people. April 1st is the date. Some Commissioners here wanted that, to say the Charter would take effect in July and the School Department would be in the same shape next year as they are this year. I'm very disturbed over that vote.

Chairman Dykstra stated I guess by voting no, they voted against the...

Commissioner Pepino stated that's right. They voted against the schools.

Commissioner Shaw stated we're already adjourned.

Chairman Dykstra stated I think it's going to pass muster evidently it carries the Secretary of State. Thank you all. It's been an experience.

There being no further business to come before the Commission, on motion by Commissioner Shaw, duly seconded by Commissioner , it was voted to adjourn.

Respectfully submitted,

Deputy City Clerk

Approved for Commission: _____
Donna M. Soucy, Secretary